

## **CHAPTER 1: CONCEPTUALISING THE PROBLEM**

### **1.1 UNDERSTANDING THE CONTEXT**

At the dawn of democracy and with the advent of the new administration under the government of national unity, the Ministry of Education produced two ground breaking white papers that formed the basis for the current system of education. The first white paper set the tone for developing a new system that brought together the various race based education departments and systems. The various values and principles on which this new order is based are set out in chapter four of the policy. One of these principles is that parents and guardians have the primary responsibility for the education of their children, and have the right to be consulted by the state with respect to the form that education should take and to take part in its governance. Furthermore, parents have an inalienable right to choose the form of education which is best for their children, particularly in the early years of schooling, whether provided by the state or not, subject to reasonable safeguards which may be required by law. The parents right to choose includes the choice of the language, cultural or religious basis of the child's education, with due regard for the rights of others and the rights of choice of the growing child.

The second White Paper dealt in detail with the issue of the organisation, governance and funding of schools. Minister Bengu appointed a review committee under the leadership of Professor Peter Hunter in March 1995 to recommend to the Minister a proposed framework for school organization, governance and funding. The report produced by the committee formed the basis for White Paper 2 on the organisation, governance and funding of schools. This white paper recommended that each public school should be governed by a governing body that should have wide and unprecedented powers. The current system of appointment of educators has its origin in the work produced by the committee and the subsequent White Paper that was published as a result of the work of the committee.

The basis for the current system is set out in paragraph 3 of the policy where it is stated that all teachers in public schools who are paid by the Provincial Education Departments should be appointed and employed by the departments on the recommendation of and in

consultation with school governing bodies. The rationale behind this position was that parents should be involved and consulted on the teachers who will educate their children.

At the time when the White Paper was published the position in respect of the appointment of educators was governed by the Educators Employment Act of 1994 and specifically section 4 of the Act. Educators were appointed in terms of this provision by the Head of Department without any recommendation by the Governing body. The entire appointment process was dealt with by the education department.

The Educators Employment Act was repealed in terms of section 37 of the Employment of Educators Act No. 76 of 1998 (EEA). The current appointment procedure was introduced for the first time in section 6 of the EEA and as indicated above had its genesis in the work of the Hunter Commission and White Paper 2. The initial provision looked different to what it does today. This particular provision was amended four times, Education Laws Amendment Acts of 1999, 2000, 2005 and the Basic Education Laws Amendment Act 15 of 2011.

The major amendment of the provision came about with the Education Laws Amendment Act 15 of 2005 when subsection 3 was substituted. Prior to the 2005 amendment the major criticism of the section 6 was that the HOD did not have any discretion on whom to appoint and that he/she was a rubberstamp and had to appoint the governing body's preferred candidate. The amendment gave the HOD the power to appoint any of the recommended candidates or may even decline to make an appointment which was a major departure from the previous position.

## **1.2 OUTLINE OF THE EXISTING PROCESS OF MAKING EDUCATOR APPOINTMENTS**

A more comprehensive and description of the appointment process for educators is provided in Chapter 2 of this report.

However in broad terms the process can briefly be described as follows:

- As soon as an educator has retired/resigned the circuit manager will be informed of the available posts.

- HR compiles post schedule and bulletin and draws up a list of requirements and a management plan which sets out the closure dates and other timelines in respect of:
  1. Sifting – Performed by PED
  2. Shortlisting – Performed by the SGB
  3. Interview – Performed by Interview committee (appointed by SGB)
  4. Submission –Submitted by the SGB to the PED.

The bulletin is advertised in the Government Gazette via an HRM circular, issued by the HOD, calling for applicants to apply as per application form. The District Directors will ensure that all circuit managers provide all school principals / acting principals with this bulletin and applications are sent to the PED for sifting.

The SGB appoints an interview committee and may co-op members if required. The interview committee shall consist of the following:

- One PED representative as a resource person being the Circuit Manager (to provide guidance on procedural issues). A school principal from another school (unless he or she is the applicant and a PED representative)
- Members of the SGB – excluding educators, learners or applicants
- One union representative per union as observers to the shortlisting, interview, drafting of preference list and ratification of recommendations
- The Chairperson should be a member of the SGB.

*All are to sign a confidentiality agreement. At any stage of the process, objections in respect of the process irregularities can be submitted.*

### 1.2.1 Sifting

1.2.1.1 The HRM in the PED sifts the CVs for technical errors and to check that candidates meet the requirements. The processes are more objective than subjective as they must meet the requirements in respect of the submission of documents.

1.2.1.2 All qualifying CVs are submitted to the SGB appointed interview committee

1.2.1.3 Unions are involved in observing the sifting process however they are not provided with the names of the applicants.

## 1.2.2 Shortlisting

1.2.2.1 The committee shortlists the applications and usually ranks the top 5 candidates. Representatives of the various unions are invited as observers, as is a departmental representative. They are only there to ensure procedures are followed.

## 1.2.3 Interviews

1.2.3.1 Must meet within 5 days. The top candidates (usually 5) are invited to interviews and the unions are also invited to attend the interviews

1.2.3.2 The interviews take place and the candidates are scored and ranked according to their scores.

## 1.2.4 Submission

1.2.4.1 The committee chooses the top three and forwards them to the SGB who recommends them in rank order according to the principles of equity and representivity. These recommendations are then forwarded to the Departments District HR.

1.2.4.2 The department then chooses one of the three candidates recommended. The appointment list is submitted to the HOD. Once the HOD signs, this list is sent to the HR Director who will draft the appointment letters and the DD will sign

1.2.4.3 If a grievance is launched, a grievance committee is appointed by the DD and consists of:

- Chairperson: Deputy Manager (HRM)
- Members:
  - Assistant Director (HR Policies)
  - Assistant Director (Employee relations)
- Additional members may be co-opted provided they were not involved in the process.

## 1.3 INTERLINKS BETWEEN DISTRICTS, TEACHER UNIONS AND SGBs

The interlinks between Districts, Teacher Unions and SGBs are the dynamic forces which need to be understood and reconsidered before an adequate grasp of what is happening in the management and governance of basic education at Provincial and

District levels can be achieved. Only with that understanding can real alternatives and fresh options be explored.

Many of those interviewed by the Task Team commented on the strengths and the weaknesses of SGBs. The best guidance available to the Task Team to make recommendations concerning SGBs appears to be the 2003 Report, *School Governance and South African Public Schools*, known as the 'Soudien Report', compiled under the Ministership of Kader Asmal, but never released.

Chapters 7 and 8 of the 'Soudien Report' offer many useful points from its analysis of aspects of SGBs and their duties. In the macro sense, the Soudien Report recommends the establishment of a National School Governing Council as well as a National and Local Governance Structures (p. 168), all intended to provide SGBs with stronger support than that provided by the Department. The point here is that this country's third biggest democratic exercise and fourth tier of democracy should be strengthened so as to make it work much better as a force in the learning and teaching in South Africa as well as a means of establishing productive relationships between schools and communities.

Given the extent to which history and changing circumstances require the review of established practices and organisations, a full-scale examination and discussion of Unions and SGBs needs to take place, using the work of Soudien, Chaka, Sayed, Woolman & Fleisch and others so as to rethink matters of school governance for the present and the near future.

The main problem addressed by the Task Team is how to diminish if not eliminate corruption in the selection and appointment of candidates for posts in the Department of Basic Education. Thus the focus has been on two areas: the environment generated by the Department and the Teacher Unions, and the processes by which recruitment and selection occur. The Task Team has sought to understand the factors and forces at work in this situation and, without dispensing blame or formulating a string of

indictments, it has made Recommendations which are intended to make possible processes which are less open to undue influence than at present.